

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 70 - Disclosure of convictions and non-court disposals

316. This section makes provision relating to the circumstances in which convictions and non-court disposals may be disclosed to the court in summary and solemn proceedings. Two new sections, 101A and 166A, are introduced to the 1995 Act and amendment is made to the existing provisions of the 1995 Act in relation to the disclosure of non-court disposals.
317. Subsections (1) and (2) of section 101A provide that when considering sentence in solemn proceedings the court may have regard to convictions or non-court disposals acquired after the date of the offence with which the accused is charged, but before the date of conviction.
318. Subsection (3) of section 101A specifies the non-court disposals which are referred to in subsection (2). These are:
- fixed penalties under section 302(1);
 - compensation offers under section 302A(1); and
 - work orders under section 303ZA(6) of the 1995 Act.
319. A fixed penalty or compensation offer may be disclosed only if it has been accepted (or deemed to have been accepted) before the date of conviction. Only a work order that has been completed before the date of conviction may be disclosed to the court.
320. Subsection (4) of section 101A requires the prosecutor to provide the court with a notice of the conviction or non-court disposal.
321. Subsection (5) of section 101A allows the court to consider convictions acquired on or after the date of the offence in other EU jurisdictions.
322. Section 70(2) substitutes a new section 166A into the 1995 Act. The previous version of section 166A, inserted by section 12 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, allowed the court in deciding on the disposal of a case in summary proceedings to have regard to any convictions acquired between the date of the offence and the date of conviction. The effect of new section 166A is to expand that provision to include non-court disposals. This is in the same manner as the provision for solemn proceedings under new section 101A discussed above.
323. Subsections (3) and (4) make amendments to section 302 and section 302A of the 1995 Act. Those sections provide for the offer of a procurator fiscal fixed penalty or

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

compensation offer respectively. The amendments extend the provisions relating to the information to be provided to an alleged offender when an offer of these disposals is made. Subsections (3) & (4) provide that an offer of a fixed penalty or compensation offer must state that if it is accepted, or deemed to have been accepted, that fact may be disclosed to a court in any proceedings to which the alleged offender is (or is liable to become) subject at that time.

324. Amendments to section 303ZA of the 1995 Act under subsection (5) make provision relating to the information that must be included in an offer of a work order.
325. In addition to the information listed in section 303ZA the offer must also state that:
 - if it is refused, or not completed, that fact may be disclosed in any proceedings for the offence in question;
 - if it is completed, that fact may be disclosed in any proceedings for an offence committed within two years of the date of completion;
 - if it is completed, that fact may be disclosed in any proceedings to which the alleged offender is (or is liable to become) subject at that time.